High-Stakes Standardized Tests During the Pandemic and Opt-Outs

This has been a tremendously stressful year for educators, students, and families across the country, with many students struggling to adapt to distance learning, the loss of regular socialization, and tremendous personal losses due to the COVID-19 pandemic. High-stakes statewide standardized tests are the last thing our students need. That is why NEA has been calling on the U.S. Department of Education (ED) and state governments to cancel all statewide standardized testing this school year. Unfortunately, despite widespread calls from educators, district superintendents, state legislators, and parents across the country, such testing will go forward in some form in every state. Only the District of Columbia was exempt from having to administer standardized tests.

While ED failed to allow states to cancel all statewide standardized tests, ED has offered to waive certain accountability requirements under federal law, including the requirements to engage in school rankings, identify schools for school improvement, and most importantly, a waiver of the requirement that at least 95% of students participate in statewide standardized tests. This means that this school year provides an excellent opportunity to advocate for opt-out legislation and policies to establish a precedent for assessing student achievement without the use of high stakes tests that could outlast the COVID-19 pandemic. The following resource is intended to inform parents and educators about the ability of parents to opt their children out of standardized tests.

This brief guidance contains:

I. An overview of existing state laws that allow parents to opt students out of state assessments.
II. Updates on how some states are expanding the right to opt-out of assessments during the pandemic and reduce the negative consequences of doing so.
III. Advice for how NEA members can safely and effectively advocate for increased assessment opt-out rights during the pandemic and beyond.

I. Some States Already Allow Parents to Opt Their Children Out of Assessments

While there is no federal law or constitutional right that allows parents to opt their children out of standardized testing, the following nine states have laws allowing parents to opt their children out of standardized testing requirements. These laws vary in multiple ways, including in whether they provide protections for students who choose to opt-out of assessments and whether educators or districts face consequences from such opt-outs. In brief, the laws provide as follows:
- **Alaska**: Local school boards may adopt policies allowing parents to withdraw their child from any required state assessment.
- **California**: School officials are required to grant a parent’s written request to excuse their child from state assessments.
- **Colorado**: School districts are required to have a policy and procedure by which a parent may excuse their children from state assessments. These policies may require a written request by the parent. If a parent chooses to excuse their student, a district may not impose any negative consequences on the student or parent.
- **Minnesota**: The state’s Education Commissioner must publish a form notifying parents of their right to not have their child participate in state assessments, explaining any academic consequences of opting-out and requesting parents to provide the basis for their opt-out decision.
- **New Hampshire**: School districts must create a form that a parent may sign to excuse their student from assessments. The district may not penalize the student or parent for opting out and the state may not penalize school districts for low test participation rates.
- **North Dakota**: A parent may direct the school district to not administer any state assessment to their children.
- **Oregon**: A parent may annually excuse their student from state assessments by completing and submitting a form to their school district.
- **Utah**: School districts are required to grant a parent’s request to excuse their student from any federally or state mandated assessment. A school district may not penalize a student who has been exempted.
- **Wisconsin**: School districts are required to grant a parent’s request to excuse students in grades 4, 8, and 9-11 from state assessments.

The majority of states have no laws or policies expressly permitting opting out of standardized tests and in many states, standardized test scores are tied to student grade promotion/graduation, educator evaluations, and school ratings. To find out the current opt-out rights within your state, including any potential implications that opting-out may have on students, educators, and schools, members should contact their local or state affiliate.

**II. States are Attempting to Waive Consequences for Test Participation During the Pandemic**

Some states have recently issued statements and policies making clear that, *for this school year only*, students are not obligated to participate in standardized assessments, although the details of these COVID-specific policies vary. Some examples of states who have created new temporary opt-out rights include:

- **South Carolina**: Families who believe it is unsafe to attend school just to take a test can opt out and there will be no penalties for the student, teacher, or school.
- **Georgia**: Virtual students who “decline to attend school in-person solely to participate in testing due to health and safety concerns” can opt out of testing.
- **New York**: Students who are entirely remote are not expected to be brought into school buildings solely for testing.
In addition, Arizona, California, Connecticut, Delaware, Georgia, Illinois, Massachusetts, Michigan, Montana, New Jersey, North Carolina, Pennsylvania, South Carolina, South Dakota, Texas, Washington, and West Virginia have all received waivers from the federal government of the federal requirement that 95% of all students participate in statewide standardized testing. That means that schools and districts in those states will not suffer federal consequences if less than 95% of students participate in testing. However, there still may be state or local consequences depending on state and school district policies.

III. How Educators Can Safely Advocate for Opt-Out Rights and Standardized Testing Reform

Even in states where parental opt-out rights already exist or where such rights have been expanded due to the pandemic, educators can be disciplined or discharged if they encourage students or their parents to opt-out of assessments or assist them in doing so. There is no First Amendment protection for an educator’s on-duty speech and only qualified protection for off-duty speech. NEA encourages our members to engage in advocacy in ways that do not put their employment at risk. Accordingly, members should conduct their advocacy efforts on non-working time and outside of the workplace (whether remote or in-person). When possible, these efforts should be directed to the public as a whole or to policy-making bodies (e.g., through op-eds in local newspapers or testimony before state legislators). Potential avenues for advocacy include:

- **State Boards of Education**: All state boards who have yet to request a federal waiver of the 95% participation requirement should be strongly encouraged to apply to ED for a waiver. State boards should also be encouraged to issue policies explicitly protecting the rights of parents to opt their children out of standardized testing for the 2020-21 school year and beyond. These policies should make clear that there will be no negative consequences for students, educators, or schools from opt-outs.

- **Local School Boards**: Members can advocate for changes to district-level policy, such as urging local school boards to adopt resolutions that acknowledge and support the rights of parents to opt their students out of assessments. Members can also lobby for related resolutions, such as a resolution calling for a reduction in standardized testing during the pandemic and in the future.

- **Changes to State Law**: Members can call on their state legislatures to enact changes to state law. Educators can champion legislation permitting broad opt-out rights. Such legislation can build on existing opt-out laws in other states but should be sure to include language ensuring opt-outs will not result in any adverse consequences for students, educators, and schools.

- **Union Resolution**: Members can work with their local and state affiliates to pass resolutions calling on school boards, the state board of education, and legislators to take action to permit opting out.

For more information about these various forms of advocacy and to get involved, please contact your local or state affiliate.